

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BENJAMIN WHITEMAN,	§
	§ No. 13, 2006
Defendant Below-	§
Appellant,	§
	§ Court Below—Superior Court
v.	§ of the State of Delaware
	§ in and for New Castle County
STATE OF DELAWARE,	§ Cr. ID No. 30901716DI
	§
Plaintiff Below-	§
Appellee.	§

Submitted: February 23, 2006

Decided: May 15, 2006

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices

ORDER

This 15th day of May 2006, upon consideration of the appellant's opening brief and the appellee's motion to affirm pursuant to Supreme Court Rule 25(a), it appears to the Court that:

(1) The defendant-appellant, Benjamin Whiteman, filed an appeal from the Superior Court's December 13, 2005 order denying his motion for correction of illegal sentence pursuant to Superior Court Criminal Rule 35(a). The plaintiff-appellee, the State of Delaware, has moved to affirm the

Superior Court's judgment on the ground that it is manifest on the face of the opening brief that the appeal is without merit.¹ We agree and affirm.

(2) In April 1987, Whiteman pleaded guilty to Burglary in the Second Degree. After declaring Whiteman a habitual offender,² the Superior Court sentenced him to 10 years incarceration at Level V, to be suspended after 3 years for 7 years of probation. In August 1989, Whiteman was found guilty by a Superior Court jury of Unlawful Sexual Penetration in the Third Degree. He was sentenced as a habitual offender to life imprisonment. This Court affirmed Whiteman's 1989 conviction on direct appeal.³

(3) In this appeal, Whiteman claims that the Superior Court should have granted his motion to correct his sentence because he was never properly adjudicated a habitual offender and, therefore, his sentence as a habitual offender is illegal. Specifically, Whiteman alleges that he never admitted to the predicate convictions as is required by the habitual offender statute, that the record regarding his 1987 burglary conviction has been altered, and that his 1987 plea is defective because the transcript of the plea colloquy was prepared by a Court of Chancery court reporter. To the extent

¹ Supr. Ct. R. 25(a).

² Del. Code Ann. tit. 11, § 4214(a).

³ *Whiteman v. State*, Del. Supr., No. 455, 1989, Walsh, J. (Jan. 11, 1991).

that Whiteman fails to raise issues previously presented to the Superior Court, he has waived review of those claims in this proceeding.⁴

(4) It does not appear that any of the claims presented in this appeal were raised by Whiteman in the Superior Court in the first instance. Consideration of those claims is, therefore, foreclosed in this appeal.⁵ Moreover, his arguments that he did not admit to the predicate offenses and that the record of his 1987 conviction was altered have already been adjudicated⁶ and may not be raised again in this proceeding.⁷ Finally, there is no basis in fact or law for Whiteman's contention that his 1987 guilty plea is invalid because it was transcribed by a court reporter of the Court of Chancery, rather than of the Superior Court.

(5) It is manifest on the face of Whiteman's opening brief that this appeal is without merit because the issues presented on appeal are controlled by settled Delaware law and, to the extent that judicial discretion is implicated, clearly there was no abuse of discretion.

⁴ *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993). In the Superior Court, Whiteman argued that his sentence was imposed in an illegal manner because the Superior Court judge never properly declared him a habitual offender on the record and that his life sentence must be commuted to a 45-year sentence under *State v. Crosby*, 824 A.2d 894 (Del. 2003).

⁵ Supr. Ct. R. 8.

⁶ *Whiteman v. State*, Del. Supr., No. 40, 2001, Steele, J. (Oct. 23, 2001).

⁷ *Brittingham v. State*, 705 A.2d 577, 579 (Del. 1998).

NOW, THEREFORE, IT IS ORDERED that, pursuant to Supreme Court Rule 25(a), the State of Delaware's motion to affirm is GRANTED. The judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/Henry duPont Ridgely
Justice